Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

HARRY T. KEANE, JR.,

Petitioner,

v.

FOX TELEVISION STATION, INC., FREMANTLEMEDIA, LTD., and SIMON COWELL,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Fifth Circuit affirmed the district court's dismissal of Petitioner's claims under 12(b)(6) and its assessment of attorney's fees against Petitioner in the amount of $130,000 under the Copyright Act, even though Petitioner had voluntarily dismissed his copyright claim.

Three questions are presented:

1. Whether a defendant is considered the "prevailing party" for purposes of assessing attorney's fees under the Copyright Act when the plaintiff voluntarily dismisses the copyright claim.

2. Does 12(b)(6) permit a district court and the court of appeals to refuse to accept well-pleaded facts as true; construe allegations contained in the complaint and attachments against the non-movant; and assume omitted or disputed facts in the movant's favor?

3. Whether a $130,000 sanction against a plaintiff based upon the alleged bad-faith conduct of his attorney violates Rule 11 and the Due-Process clause of the Fifth Amendment.

LIST OF PARTIES

Petitioner is Harry T. Keane, Jr.

Respondents are Fox Television Station, Inc., FremantleMedia of North America, Inc., and Simon Cowell.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Harry T. Keane, Jr., is an individual.

Respondent, Fox Television Station, Inc., is not a publicly-traded corporation, and its parent company is News Corporation.

Respondent, FremantleMedia of North America, Inc., is not a publicly-traded corporation.

Respondent, Simon Cowell, is an individual.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	vi
TABLE OF APPENDICES	ia
OPINION BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL, STATUTORY PROVISIONS, AND RULES INVOLVED	1
STATEMENT OF THE CASE	3
REASONS FOR ALLOWANCE OF THE WRIT	5
I. REVIEW IS WARRANTED TO RESOLVE THE QUESTION OF WHETHER A DEFENDANT IS ENTITLED TO ATTORNEY'S FEES AS A "PREVAILING PARTY" UNDER THE COPYRIGHT ACT EVEN THOUGH A PLAINTIFF HAS VOLUNTARILY DISMISSED THE COPYRIGHT CLAIM	7
A. The Fifth Circuit's judgment that Keane's voluntary dismissal of his claim rendered the defendant a "prevailing party" under the Copyright Act conflicts with this Court's prior holdings regarding what constitutes a "prevailing party."	7

TABLE OF CONTENTS – Continued

Page

B. The Fifth Circuit's judgment, and the Ninth Circuit's opinion on which it rests, conflicts with other Circuits that have determined that a defendant does not become a "prevailing party" simply because a plaintiff voluntarily drops a claim 9

C. The Court's resolution of this issue is necessary to prevent the nullification of Federal Rule of Civil Procedure 41(d) 10

II. REVIEW IS WARRANTED TO ADDRESS THE IMPROPER ADJUDICATION ON THE MERITS OF KEANE'S CLAIMS ON 12(B)(6) IN A MANNER CONTRARY TO THIS COURT'S HOLDINGS AS WELL AS THE HOLDINGS OF OTHER CIRCUITS 10

A. The Fifth Circuit's adjudication of Keane's trademark claim under 12(b)(6) was improper and conflicts with other circuit decisions 11

B. The Fifth Circuit's adjudication of Keane's breach-of-implied-contract claim under 12(b)(6) was improper and conflicts with the Second Circuit 12

C. The Fifth Circuit's adjudication of Keane's trade-secret claims conflicts with other circuit decisions and prior Fifth Circuit authority 13

TABLE OF CONTENTS – Continued

Page

III. REVIEW IS WARRANTED TO ADDRESS WHETHER A $130,000 SANCTION AGAINST A PARTY FOR CONDUCT THE COURT ATTRIBUTED TO HIS ATTORNEYS VIOLATES RULE 11 AND DUE PROCESS 15

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES

A.L. Laboratories, Inc. v. Philips Roxane, Inc., 803 F.2d 378 (8th Cir. 1986) 14

Best Industries, Inc. v. CIS Bio Int'l, Inc., 134 F.3d 362 (4th Cir. 1998) 9

Blue Bell, Inc. v. Farah Manufacturing Co., 508 F.2d 1260 (5th Cir. 1975) 12

Buckhannon Board and Care Home, Inc. v. West Virginia Dep't of Health & Human Serv., 532 U.S. 598 (2001) 8

Burten v Milton Bradley Co., 763 F.2d 461 (1st Cir. 1985) 14

Capital Films v. Charles Fries Productions, Inc., 628 F.2d 387 (5th Cir. 1980) 14

Chance v. Pac-Tel Teletract, Inc., 242 F.3d 1151 (9th Cir. 2001) 12

Conley v. Gibson, 355 U.S. 41 (1957) 10, 11

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990) 15

Corcoran v. Columbia Broadcasting Sys., 121 F.2d 575 (9th Cir. 1941) 9

Fogerty v. Fantasy, 510 U.S. 517 (1994) 7

Gunther-Wahl Productions, Inc. v. Mattel, Inc., 128 Cal. Rptr. 2d 50 (2nd Dist. 2003) 13

Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guniee, 456 U.S. 694 (1982) 15

Sequa Corp. v. Cooper, 245 F.3d 1036 (8th Cir. 2001) 9

ABLE OF AUTHORITIES – Continued

Page

Szabo Food Service, Inc. v. Canteen Corp., 823 F.2d 1073 (7th Cir. 1987) 9

Whitfield v. Lear, 751 F.2d 90 (2nd Cir. 1984) 13

CONSTITUTION

U.S. Const. amend. V 2

STATUTES

17 U.S.C. § 505 ..... 1, 5, 7

42 U.S.C. § 1973l(d) 8

42 U.S.C. § 1988 ..... 8, 9

42 U.S.C. § 2000e-5(k) 7

RULES

FED.R.CIV.P. 11(c)(2) 2, 15

FED.R.CIV.P. 11(c)(2)(A) 15

FED.R.CIV.P. 41(d) 2, 5, 6, 10

TREATISES & OTHER AUTHORITY

RESTATEMENT OF TORTS § 757 (1939) 14

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unreported. *See* Appendix A. In its opinion, the Fifth Circuit affirmed two orders of the district court: (1) an order entered on January 8, 2004, reported at 297 F.Supp.2d 921 (S.D. Tex. 2004), dismissing Petitioner's claims under 12(b)(6); and (2) an order entered on April 4, 2004, ordering Petitioner to pay $129,657.40 in attorney's fees and costs to Respondents. *See* Appendices B, C.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

The Fifth Circuit's opinion was rendered on March 17, 2005. *See* Appendix A. The Petition for Panel Rehearing was denied on April 19, 2005. *See* Appendix D. Justice Scalia granted Petitioner's Application for An Extension of Time Within Which To File a Petition for Writ of Certiorari on July 8, 2005, extending the time to and including August 8, 2005. (Sup. Ct. No. 05A23).

CONSTITUTIONAL, STATUTORY PROVISIONS, AND RULES INVOLVED

Title 17 United States Code, Section 505.

Remedies for infringement; Costs and attorney's fees.

In any civil action under this title, the court in its discretion may allow the recovery of full costs

by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

Federal Rule of Civil Procedure 41(d).

Costs of Previously-Dismissed Action.

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Federal Rule of Civil Procedure 11(c)(2).

Nature of Sanction; Limitations.

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

Fifth Amendment, U.S. Constitution.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the

Militia, when in actual service in time of War of public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

1. Petitioner Harry Keane asserts in this case that, in 1994, he created a novel concept for a national television competition that would be called American Idol.[1] By 1998, Keane asserts he had refined his concept to include a computer-generated staging of his concept, which would definitely be named American Idol.

In May 1998, Keane disclosed his concept for the purpose of seeking sponsorship. Among those Keane disclosed his concept for American Idol to were production companies including Pearson TV Int'l., and respondent Simon Fuller's company, later known as FremantleMedia N.A.

In 2000, Keane obtained an investor for his American Idol talent competition by selling a 15% interest in his company and the American Idol project for $6,000.

In October 2001, Pop Idol aired on British Television, which respondent Fuller claims he co-created. Fuller sold

[1] Other possible names for the competition were Ultimate Starsearch and American Superstar.

the "format" of that show, which then aired in the United States as American Idol.

Keane asserts the American Idol format sold by Fuller is materially identical to the national talent competition he created in 1994, and refined through 1998. Those who helped or invested in Keane's American Idol project believed it was Keane's show when they saw it on American television.

2. Keane filed his Complaint in the United States District Court in the Southern District of Houston, Texas, on May 14, 2003. Fox Television filed its first motion to dismiss on July 24, 2003. Keane then filed a motion for leave to amend and his First Amended Complaint on August 15, 2003. The district court granted Keane's motion for leave to amend and Fox then filed a second motion to dismiss.

On October 23, 2003, following a hearing in which the district court expressed questions about whether Keane could maintain a copyright claim, Keane filed his Second Amended Complaint and voluntarily dropped his copyright claim. Fox Television filed its third motion to dismiss. Keane filed a response but the district court granted the motion and dismissed Keane's claims on January 5, 2004. Keane filed a motion for new trial, which the trial court overruled in an order entered on March 5, 2004.

Fox Television then filed a Motion for Award of Attorney's Fees. Keane responded. The district court granted Fox Television's request and ordered Keane to pay $129,657.40 in attorney's fees as costs on April 12, 2004.

3. Keane filed two notices of appeal. On April 2, 2004, he filed his Notice of Appeal with regard to the 12(b)(6)